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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,273	12/11/2000	Thomas C. Harrop	50671-P018US-10013652	5508

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DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P.
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EXAMINER

NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/734,273

Applicant(s)

HARROP, THOMAS C. 7

Examiner

Dustin Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1 – 33 are presented for examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14, 23-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A. The following terms lack antecedent basis:

- | | | | |
|------|--------------|---|-------------|
| I. | the method | - | claims 1, 9 |
| II. | the system | - | claim 23 |
| III. | the computer | - | claim 29. |

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al. [US Patent No 6,460,082], in view of Ding et al. [US Patent No 6,691,067].

6. As per claim 1, Lumelsky discloses the invention substantially as claimed including the method of controlling resources in a computer system having a plurality of resources available to it, said method comprising the steps of:

comparing said obtained data against an estimated requirement for said resources to arrive at a prediction of system requirements [col 15, lines 17-30; and col 17, lines 1-8]; and providing a signal when said prediction varies from a predicted limit [col 4, lines 7-9; and col 14, lines 38-57].

Lumelsky does not specifically disclose monitoring selected ones of said resources to obtain data pertaining to the availability of each said monitored resource.

Ding discloses monitoring selected ones of said resources to obtain data pertaining to the availability of each said monitored resource [Abstract; and col 6, lines 14-26].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Lumelsky and Ding because Ding's teaching of monitored resource would provide a more accurate and efficient monitoring and prediction of computer system performance [Ding, col 2, lines 41-44].

7. As per claim 2, Lumelsky discloses performing at least one calculation with respect to

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certain of said obtained data [col 4, lines 18-22; and col 8, lines 45-47].

8. As per claim 3, Lumelsky discloses without user intervention, enabling the addition of resources under control of said signal providing step when said prediction indicates that the resource are below said limit [i.e. dynamic] [col 4, lines 23-29; and col 11, lines 39-43].

9. As per claim 4, Lumelsky discloses without user intervention, enabling the reduction of resources under control of said signal providing step when said prediction indicates that the required resources are above said limit [i.e. release] [col 4, lines 23-29; and col 11, lines 39-43].

10. As per claim 5, Lumelsky discloses storing historical data on resource usage [col 14, lines 27-32].

11. As per claim 6, Lumelsky does not specifically disclose signal is in graphical form on a resource by resource basis. Ding discloses signal is in graphical form on a resource by resource basis [col 11, lines 11-31]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Lumelsky and Ding because Ding's teaching of graphical form would allow to view the system performance in real-time.

12. As per claim 7, Lumelsky discloses analyzing all available applications as a function of at least one system resource [col 13, lines 14-20].

13. As per claim 8, Lumelsky discloses resources are selected from the set of resources, including memory, CPU, disk, available ports, and network resources [col 2, lines 63-65; and col 5, lines 15-18].

14. As per claim 9, it is rejected for similar reasons as stated above in claims 1, 3 and 4.

15. As per claim 10, it is rejected for similar reason as stated above in claim 2.

16. As per claim 11, Lumelsky discloses adding resources to said system from a remote location [col 5, lines 61-63; and col 7, lines 19-24].

17. As per claim 12, Lumelsky discloses removing resources from said system [col 11, lines 39-43].

18. As per claim 13, it is rejected for similar reasons as stated above in claim 5.

19. As per claim 14, it is rejected for similar reason as stated above in claim 7.

20. As per claims 15-22, they are apparatus claimed of claims 1-8, they are rejected for similar reasons as stated above in claims 1-8.

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21. As per claims 23-28, they are apparatus claimed of claims 9-14, they are rejected for similar reasons as stated above in claims 9-14.

22. As per claims 29-33, they are program product claimed of claims 9-13, they are rejected for similar reasons as stated above in claims 9-13.

23. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on Monday – Friday (8:00 – 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directly to the receptionist whose telephone number is (703) 305-3900.

Dustin Nguyen



JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100